

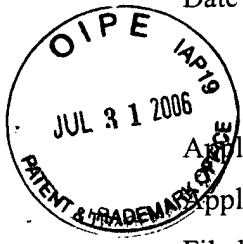
Express Mail Label No.: EV 532354365US

Date of Deposit: July 31, 2006

PATENT APPLICATION

Attorney Docket No. 22097-003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



App'l. No. : 09/746,984 Confirmation No. 4295
Applicant(s) : Ion Leon Batachia and Adrian Amariei
Filed : December 22, 2000
TC/A.U. : 3624
Examiner : Felten, Daniel S.
Title : **TRANSACTIONS BETWEEN VENDORS AND CUSTOMERS
USING PUSH/PULL MODEL**

MAIL STOP PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Sir:

Transmitted herewith for filing in the present application are the following documents:

1. Petition for Withdrawal of Erroneously Issued Notice of Abandonment [3 pgs];
2. Copy of Transmittal Letter filed on June 19, 2006 [1 pg.];
3. Copy of the Amendment and Response filed on June 19, 2006 [10 pgs.];
4. Copy of Petition for Extension of Time filed on June 19, 2006 [1 pg.];
5. Copy of Check No. 3264 for \$510.00 to cover extension fee [1 pg.];
6. Copy of date-stamped returned Postcard from Patent Office dated June 19, 2006 [1pg.];
7. Copy of date-stamped Express Mail Label No. EV 829091234US dated June 19, 2006 [1 pg.]; and
8. a Return Postcard.

The Director is hereby authorized to charge any additional fees that may be due to Deposit Account No. **50-0311**, Ref. No. **22097-003**, Customer No. **35437**.

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at 212-935-3000.

Respectfully submitted,

Dated: July 31, 2006


Brian P. Hopkins, Reg. No. 42,669

Attorney for Applicants
Mintz Levin Cohn Ferris Glovsky & Popeo, P.C.
The Chrysler Center, 666 3rd Ave., 24th Fl.
New York, New York 10017
Tel: (212) 935-3000
Fax: (212) 983-3115

Express Mail Label No.: EV 532354365US

Date of Deposit: July 31, 2006

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MAIL STOP PETITIONS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION FOR WITHDRAWAL OF

ERRONEOUSLY ISSUED NOTICE OF ABANDONMENT

Dear Sir:

A Notice of Abandonment, dated July 6, 2006, was received by Applicant's below named Representative of record for the above-identified patent application. The Notice of Abandonment indicated that the subject application was abandoned for failure to timely file a reply to the Office Action letter mailed on December 19, 2005. Pursuant to M.P.E.P. §711.03, Applicants respectfully submits that a reply was filed and respectfully request that the Office issue a new Notice of Abandonment indicating that a reply was filed, and the subject application is afforded its December 22, 2000 filing date for priority purposes. The following documents are enclosed as support for this request:

Applicants respectfully submit the following documents:

- (1) Copy of Transmittal Letter filed on June 19, 2006 [1 pg.];
- (2) Copy of Amendment and Response filed on June 19, 2006 [10 pgs.]
- (3) Copy of Petition for Extension of Time filed on June 19, 2006 [1 pg.];
- (4) Copy of Check No. 3264 for \$510.00 to cover extension fee [1 pg.];
- (5) Copy of date-stamped returned Post Card from Patent Office dated June 19, 2006 [1 pg.]; and
- (6) Copy of date-stamped Express Mail Label No. EV 829091234US dated June 19, 2006 [1 pg.].

In view of the above statements and attached documents, Applicants respectfully request that the erroneous abandonment of the subject application be withdrawn.

Should the Office have any questions relating to this request, it is suggested that the Office contact the below named Representative.

It is believed that no fees are due, except for in connection with filing this Request. In the event that it is determined that fees are due, however, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0311, Customer No. 35437 (reference docket no. 22097-003).

I hereby declare that all statements made herein of are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the application or any patent issued thereon.

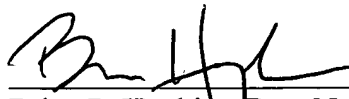
Express Mail Label No.: EV 532354365US
Date of Deposit: July 31, 2006

Application Serial No.: 09/746,984
Attorney Docket No.: 22097-003

Applicant's undersigned Representative may be reached in our New York office by telephone at (212) 692-6803. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

Dated: July 31, 2006



Brian P. Hopkins, Reg. No. 42,699
Attorney for Applicants
c/o MINTZ, LEVIN, COHN, FERRIS
GLOVSKY AND POPEO, P.C.
One Financial Center
Boston, MA 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO PC

NEW YORK INTELLECTUAL PROPERTY ACCT
688 THIRD AVE
NEW YORK, NY 10017

3264

DATE 6/19/2006

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FOR

22097-003

B. H. H.

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COPY

Serial No. 09/744,984 File No. 22097-003 By: B.P. Hopkins
Title: TRANSACTIONS BETWEEN VENDOR + CUSTOMER...
Application of: EDN LEON BATACHIA ET AL Date: 12-22-2000

The U.S. PTO Mail Room acknowledges receipt of the following on the date stamped hereon:

<input type="checkbox"/> Req. for CPA under 37 CFR 1.53(d)	<input type="checkbox"/> Provisional Application Cover Sheet
<input type="checkbox"/> Change of Attorney's Address	<input type="checkbox"/> Int. Disc. Statement, PTO Form 1449
<input type="checkbox"/> New Power of Attorney	<input type="checkbox"/> References Cited
<input type="checkbox"/> Patent Application	<input checked="" type="checkbox"/> Copy of Notice to File Missing Parts
<input type="checkbox"/> Non-provisional <input type="checkbox"/> Provisional	<input checked="" type="checkbox"/> Amendment/Response
Incl. _____ pages, (_____ pgs) Specification	<input checked="" type="checkbox"/> Petition for Ext. of Time (x2)
(_____ pgs) Abstract, (_____ pgs) Claims	<input checked="" type="checkbox"/> Issue Fee Transmittal
<input type="checkbox"/> Design Patent Application	<input checked="" type="checkbox"/> Letter to Official Draftsperson
<input type="checkbox"/> Declaration(s)	<input checked="" type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Drawings _____ sheet(s) (FIGS. _____)	<input checked="" type="checkbox"/> Brief (x3)
<input type="checkbox"/> Formal <input type="checkbox"/> Informal	<input checked="" type="checkbox"/> Check for \$ <u>510.00</u> Check # <u>3264</u>
<input type="checkbox"/> Verified Statement claiming small entity status	<input checked="" type="checkbox"/> Transmittal Letter (x2)
<input type="checkbox"/> Assignment and Cover Sheet	<input checked="" type="checkbox"/> Cert. of Mailing under 37 CFR 1.8(a)
	<input checked="" type="checkbox"/> Express Mail Label No. <u>EV829091234US</u>
<input type="checkbox"/> Other _____	

DATE MAILED 6/19/2006

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Customer Copy
Label 11-F, April 2004

EV 829091234 US



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Date Accepted 6/19/06	Scheduled Date of Delivery	Return Receipt Fee		Mo. Day			
Month Day Year	Month Day	\$		Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Time Accepted 8:33 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Scheduled Time of Delivery	COD Fee	Insurance Fee	Mo. Day			
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Flat Rate <input type="checkbox"/> or Weight	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Total Postage & Fees \$ 14.40		<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Mail Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.			
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FROM: (PLEASE PRINT) MINTZ LEVIN COHN FERRIS GLOVSKY & POPE, PC 606 3RD AVE FL 24 NEW YORK NY 100 BPH				TO: (PLEASE PRINT) MAIL STOP AMENDMENT Commissioner for Patent P.O. Box 1450 Alexandria, VA 22313-1450			

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Filed : December 22, 2000
TC/A.U. : 3624
Examiner : Daniel S. Felten
Title : TRANSACTIONS BETWEEN VENDORS AND
CUSTOMERS USING PUSH/PULL MODEL



COPY

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FOR EXTENSION OF TIME

Pursuant to 37 C.F.R. § 1.136(a), Applicants hereby petitions for a three (3)-month extension of time to file a response to the above-identified non-provisional application for the outstanding Office Action of December 19, 2005. With the extension, the term for response or taking action in this application expires on June 19, 2006. A check in the amount of \$510.00, in payment of the fee required by 37 C.F.R. § 1.17(a)(1), for a small entity is enclosed herewith.

Please charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. **50-0311**, Reference No. **22097-003**, Customer No. **35437**. A duplicate copy of this Petition is enclosed.

Date: June 19, 2006

Respectfully submitted,

Brian P. Hopkins, Reg. No. 42,669
Attorney for Applicants
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
Chrysler Center, 666 3rd Ave., 24th Floor
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Fax: (212) 983-3115

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



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COPY

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Sir:

Transmitted herewith for filing in the present application are the following documents:

1. Amendment and Response [10 pgs];
2. Petition for Extension of Time [1 pg.];
3. Check No. 3264 in the amount of \$510.00 to cover extension fee; and
4. a Return Postcard.

The Director is hereby authorized to charge any additional fees that may be due to Deposit Account No. 50-0311, Ref. No. 22097-003, Customer No. 35437. A duplicate copy of this transmittal letter is enclosed.

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at 212-935-3000.

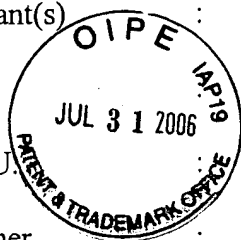
Respectfully submitted,

Dated: June 19, 2006

Brian P. Hopkins, Reg. No. 42,669
Attorney for Applicants
Mintz Levin Cohn Ferris Glovsky & Popeo, P.C.
The Chrysler Center, 666 3rd Ave., 24th Fl.
New York, New York 10017
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Fax: (212) 983-3115

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Docket No. : 22097-003
Customer No. : 35437
Title : TRANSACTIONS BETWEEN VENDORS AND
CUSTOMERS USING PUSH/PULL MODEL



June 19, 2006
New York, New York

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT AND RESPONSE

Dear Sir:

In response to the outstanding Office Action dated December 19, 2005 (Paper No. 12092005) for the above-identified patent application, the time for responding having been extended three months from March 19, 2006, to June 19, 2006, Applicants submit the present Amendment and Response.

The **claim listing** can be found beginning on page 2 of this paper.

Remarks begin on page 7 of this paper.

Listing of the Claims

The claims as presented by the present response are set out below and replace all previous claim listings.

1. **(currently amended)** An offer and acceptance method comprising:

 dynamically generating an initial offer for a customer including a dynamically generated price for a product and/or service based upon the perishability of the product and/or service; and

 pushing the offer to the a customer via a wireless mobile device.
2. (original) The method as in claim 1, further comprising:

 receiving a customer request for the offer.
3. (original) The method as in claim 1, wherein generating the offer further comprises:

 using an intelligent agent to generate the offer.
4. (original) The method as in claim 1, wherein generating the offer further comprises:

 generating an offer package having a plurality of options.
5. (original) The method as in claim 4, wherein generating the plurality of options further comprises:

 generating the options based on customer profile.
6. (original) The method as in claim 4, wherein generating the plurality of options further comprises:

 generating the options based on customer preferences.
7. (original) The method as in claim 4, wherein generating the plurality of options

further comprises:

generating the options based on a predicted behavior of the customer.

8. (original) The method as in claim 4, wherein generating the plurality of options further comprises:

generating the options based on a customer's perceived value.

9. (original) The method as in claim 4, wherein generating the plurality of options further comprises:

taking into consideration no-shows.

10. (previously amended) The method as in claim 1, wherein the generated offer is also based on the real-time location of the customer.

11. **Canceled.**

12. **Canceled.**

13. **Canceled.**

14. **Canceled.**

15. (previously presented) The method as in claim 1, wherein dynamically generating the offer comprises:

using environmental parameters.

16. (original) The method as in claim 4, further comprising:

generating a plurality of offer packages, each offer package directed to a target customer/customers.

17. (original) The method as in claim 4, further comprising:
- receiving a customer's selection; and
 - updating a customer profile based on the selection.
18. (original) The method as in claim 1, further comprising:
- negotiating the offer with a customer's intelligent agent.
19. **(currently amended)** An offer and acceptance apparatus comprising:
- means for dynamically generating an initial offer for a customer including a dynamically generated price for a product and/or service based upon the perishability of the product and/or service; and
 - means for pushing the offer to a customer via a wireless mobile device.
20. (original) The apparatus as in claim 19, further comprising:
- means for a customer to request the offer.
21. **Canceled.**
22. (previously presented) The apparatus as in claim 19, wherein the generated offer is also based on the real-time location of the customer.
23. (original) The apparatus as in claim 19 further comprising means to transmit the offer to the customer.
24. (original) The apparatus as in claim 19, further comprising:
- means for the customer to negotiate the offer.
- 25-43. Cancel.

44. **(currently amended)** A server comprising:

 ~~having one or more programs operational thereon and for performing all or~~
 ~~a portion of an offer and acceptance method, the method comprising:~~
 dynamically generating an initial offer for a customer including a
 dynamically generated price for a product and/or service based upon the
 perishability of the product and/or service; and pushing the offer to a
 customer via a wireless handheld device.
45. **(currently amended)** The server as in claim 44, wherein the one or more programs
are also operational for ~~method further comprises:~~ receiving a customer request for
the offer.
46. **(currently amended)** The server as in claim 44, further comprising operational
agents for wherein generating the offer ~~further comprises: using an intelligent agent~~
~~to generate the offer.~~
47. **(currently amended)** The server as in claim 44, wherein generating the offer
further includes ~~comprises:~~ generating an offer package having a plurality of
options.
48. **(currently amended)** The server as in claim 47, wherein generating the plurality
of options further includes ~~comprises:~~ generating the options based on customer
profile.
49. **(currently amended)** The server as in claim 47, wherein generating the plurality
of options further includes ~~comprises:~~ generating the options based on customer
preferences.
50. **(currently amended)** The server as in claim 47, wherein generating the plurality
of options further includes ~~comprises:~~ generating the options based on a predicted
behavior of the customer.

51. **(currently amended)** The server as in claim 47, wherein generating the plurality of options further includes ~~comprises~~ generating the options based on a customer's perceived value.
52. **(currently amended)** The server as in claim 47, wherein generating the plurality of options further includes ~~comprises~~ taking into consideration no-shows.
53. **Canceled.**
54. **Canceled.**
55. **Canceled.**
56. **(currently amended)** The server as in claim 44, wherein dynamically generating the offer includes ~~comprises~~ using environmental parameters.
57. **(currently amended)** The server as in claim 47, wherein the method also includes ~~further comprises~~ generating a plurality of offer packages, each offer package directed to a target customer/customers.
58. **(currently amended)** The server as in claim 47, wherein the one or more programs are operational for method ~~further comprises~~ receiving a customer's selection; and updating a customer profile based on the selection.
59. **(currently amended)** The server as in claim 44, wherein the one or more programs are operational for method ~~further comprises~~ negotiating the offer with a customer's intelligent agent.

REMARKS

The application has been reviewed in light of the outstanding Office Action dated December 19, 2005. Claims 1-13, 15-20, 22-24, 44-52 and 56-59 are currently pending. Claims 14 and renumbered claims 25-43 were previously canceled without prejudice and/or disclaimer of subject matter. Claims 11-13, 21 and 53-55 have now also been canceled without prejudice and/or disclaimer of subject matter. Claims 1, 19, 44-52 and 56-69 have been amended. Claims 1, 19 and 44 are independent. Each of the points raised in the outstanding Action are addressed below.

Rejection of Claims 11-13, 21 and 53-55

Rejections of claims 11-13, 21 and 53-55 noted in the outstanding Action are now rendered moot in view of the cancellation of these claims.

§112, Second Paragraph Rejection

Claims 44-59 were rejected under 35 U.S.C. §112, second paragraph as being indefinite, in that the Examiner is unclear as to whether the claims are directed to an apparatus or a method. Applicants respectfully submit that claims 44-52 and 56-59 have been amended to better point out that these claims are directed to an apparatus (e.g., a server), which includes one or more programs operational thereon. The programs are operation to allow certain claimed functionality recited in the claims. Accordingly, Applicants submit that the claims meet all the requirements of §112, second paragraph, and respectfully request that this rejection be withdrawn.

§101 Rejection

Claims 44-59 were rejection under 35 U.S.C. §101, as being directed to non-statutory subject matter. The Examiner alleges that claims 44-59 are intended to embrace two different statutory classes. While Applicants are of the opinion that the former un-amended claims covered two statutory classes of invention, Applicants respectfully submit that amended claims have deleted any language directed to the term “method”, and submit that claims 44-52 and 56-59 conform to a single statutory class. Withdrawal of this rejection is now respectfully requested.

Prior Art Rejection of The Claims

Claims 1-10, 15-20, 22-24, 44-52 and 56-59 were rejection under 35 U.S.C. §102 as being anticipated over U.S. patent no. 6,134,534 (Walker et al.). For the following reasons, Applicants submit that the claimed invention is patentable over the cited art.

Amended independent claim 1 is directed to an offer and acceptance method including dynamically generating an initial offer to a customer including a dynamically generated price for a product and/or service based upon the perishability of the product and/or service and pushing the offer to the customer via a wireless mobile device. Amended independent claims 19 and 44 recited similar patentable features.

In the present invention, vendors can, for example, utilize wireless mobile devices for pushing offers to customers for products and services which, for example, go unused (i.e., perishable). For example, a vendor may be an airline who generates an offer for a coach seat on a flight which is scheduled to depart within a predetermined time period (e.g., hours/days prior to the departure time of the flight). Accordingly, the service is perishable as it will no longer be available after the departure of the flight and, moreover, the product/service is underutilized (seats available). The offer is provided via a wireless mobile device since such device (e.g., mobile phones) are generally with the customer.

Based on the perishability of the product/service, the price for the product/service may be for a substantial discount (for example) off the regular cost of the seat due to the perishable nature of the product/service.

After a thorough review of the cited prior art, Applicants could find no disclosure, teaching or suggestion of dynamically generating an initial offer to a customer based on the perishability of the product or service being offered, and pushing the offer to the customer via a wireless mobile device. There is simply no such disclosure, teaching or suggestion in Walker et al. Even assuming, *arguendo*, that Walker et al. discloses pushing an offer to a customer, which Applicants submits that Walker et al. does not, it is the customer who makes the initial offer in Walker et al., and it is only when the offer is accepted by a plurality of sellers in Walker et al., that multiple are sellers allowed to “market” and “post-sell” their product.

It is Applicants’ claimed invention that vendors/sellers dynamically generate offers based on perishability, and push initial offers to customers, at which point the customer can determine to accept the offer. Moreover, especially with respect to claim 22, upon a customer being in a certain geographical area (real-time location as claimed in claim 22) near a certain vendor, the vendor can dynamically generate and push offers to the customer since they are located in the area of the vendor’s store (for example). The Action merely cites to a section of Walker et al. discussing general knowledge of wireless networks - not to dynamically generating an offer ***based on*** the real-time location of the customer obtained from his wireless device/network.

For at least the above-noted reasons, claim 1, 19 and 44 are patentable over the cited prior art. Since the remainder of the art of record fails to meet the deficiencies of Walker et al., Applicants respectfully submit that these claims are also patentable over the prior art of record.

The remainder of the claims, being dependent from one or another of the distinguished independent claims are also patentable for the same reasons.

Accordingly, Applicants respectfully request that the prior art rejections of the claims be withdrawn.

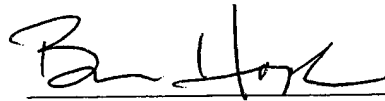
CONCLUSION

In view of the foregoing remarks, Applicants submit that all the issues raised in the outstanding Action have all been addressed. Accordingly, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

No fee is currently due, save for the fee for the extension of time, for the present response. However, in the event that it is determined that additional fees are due, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0311.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 935-3000. All correspondence should continue to be directed to our address given below.

Respectfully submitted,



Brian P. Hopkins, Reg. No. 42,669
Attorney for Applicants

Date: June 19, 2006

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666 Third Avenue, 24th Floor
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